



**OIL SPILL RESPONSE,  
PREVENTION, AND  
ADMINISTRATION FEES LAW  
AND GOVERNMENT CODE**



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## REVENUE AND TAXATION CODE PROVISIONS

### Relating to the Oil Spill Response, Prevention, and Administration Fees

#### (Part 24 of Division 2)

[Added Stats. 1991, Ch. 300, effective August 1, 1991.]

- Chapter 1. General Provisions and Definitions. §§ 46001-46029.  
2. Oil Spill Prevention and Administration Fee and Oil Spill Response Fee. §§ 46051-46101.  
3. Determinations. §§ 46151-46357.  
4. Collection of Fee. §§ 46401-46464.5.  
5. Overpayments and Refunds. §§ 46501-46551.  
6. Administration. §§ 46601-46627.  
7. Disposition of Proceeds. §§ 46651-46653.  
8. Violations. §§ 46701-46706.  
9. Disclosure of Information. § 46751.

#### CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- § 46001. Citation of part.  
§ 46002. Collection and administration of fees.  
§ 46003. Definitions in chapter govern construction of part.  
§ 46004. Construction as restatements and continuations.  
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§ 46021. "Petroleum products".  
§ 46022. "Pipeline".  
§ 46023. "Refinery".  
§ 46024. "Responsible party" or "party responsible".  
§ 46025. "Spill".  
§ 46026. "State Interagency Oil Spill Committee".  
§ 46027. "State oil spill contingency plan".  
§ 46028. "Tanker".  
§ 46029. "Vessel".

**46001. Citation of part.** This part shall be known and may be cited as the Oil Spill Response, Prevention, and Administration Fees Law.

**46002. Collection and administration of fees.** The collection and administration of the fees referred to in Sections 46051 and 46052 shall be governed by the definitions contained in Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code, unless expressly otherwise provided by the definitions contained in this part.

46003. **Definitions in chapter govern construction of part.** Except where the context otherwise requires, the definitions contained in this chapter govern the construction of this part.

46004. **Construction as restatements and continuations.** The provisions of this part, insofar as they are substantially the same as existing provisions of law relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments.

46005. **Actions commenced before this part not affected.** Any action or proceeding commenced before this part takes effect, or any right accrued, is not affected by this part, but all procedures taken shall conform to the provisions on this part as far as possible.

46006. **“Administrator”.** “Administrator” means the chief deputy director of the Department of Fish and Game appointed by the Governor pursuant to Section 8670.4 of the Government Code.

46007. **“Barges”.** “Barges” means any relatively flat-bottomed, waterborne vessel which is propelled by being pulled or pushed by another vessel, and is constructed or adapted to carry crude oil or petroleum products in commercial quantities as cargo.

46008. **“Barrel”.** “Barrel” means 42 gallons of crude oil or petroleum products.

46009. **“Board”.** “Board” means the State Board of Equalization.

46010. **“Crude oil”.** “Crude oil” means petroleum in an unrefined or natural state, including condensate and natural gasoline.

46011. **“Discharge”.** “Discharge” means any release of at least one barrel of oil into marine waters which is not authorized by any federal, state, or local government entity.

46012. **“Designated amount”.** “Designated amount” means an amount equal to one hundred nine million seven hundred fifty thousand dollars (\$109,750,000), subject to the following:

(a) Fifty-four million eight hundred seventy-five thousand dollars (\$54,875,000) shall be retained in the Oil Spill Response Trust Fund as cash.

(b) Fifty-four million eight hundred seventy-five thousand dollars (\$54,875,000) shall be accessible in the Oil Spill Response Trust Fund in the form of financial security obtained by the Treasurer.

History.—Stats. 1993, Ch. 1190, in effect October 11, 1993, added “, adjusted for inflation,” after “Fifty million dollars (\$50,000,000)” in subdivision (b). Stats. 1995, Ch. 940, in effect January 1, 1996, substituted “one hundred nine million seven hundred fifty thousand dollars (\$109,750,000)” for “one hundred million dollars (\$100,000,000), adjusted for inflation after January 1, 1991” after “amount equal to” in the first paragraph; substituted “Fifty-four million eight hundred seventy-five thousand dollars (\$54,875,000)” for “Fifty million dollars (\$50,000,000)” before “shall be retained” and deleted “, adjusted for inflation” after “Fund as cash” in subdivision (a); substituted “Fifty-four million eight hundred seventy-five thousand dollars (\$54,875,000)” for “Fifty million dollars (\$50,000,000), adjusted for inflation” before “shall be accessible” in subdivision (b); and added subdivision (c). Stats. 1996, Ch. 362, in effect January 1, 1997, deleted a comma after “(\$54,875,000)” in subdivision (b) and deleted subdivision (c) which read: “Commencing June 30, 2003, the amounts designated in this section shall be adjusted for inflation as specified in paragraph (3) of subdivision (h) of Section 8670.48 of the Government Code.”

46013. **“Feepayer”**. “Feepayer” means any person who may be liable for the payment of a fee imposed by either Section 8670.40 or 8670.48 of the Government Code.

46014. **“Independent crude producer”**. “Independent crude oil producer” means any person or entity producing crude oil within this state who does not refine crude oil into product, and who does not own or operate any retail gasoline marketing facilities.

46015. **“Local government”**. “Local government” means any chartered or general law city, chartered or general law county, or any city and county.

46016. **“Marine facility”**. “Marine facility” means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting crude oil or petroleum products and is located in marine waters, or is located where a discharge could impact marine waters unless the facility, (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or, (2) is placed on a farm, nursery, logging site, small craft marina, or construction site and does not exceed 20,000 gallons in a single storage tank. For purposes of this part, a small craft marina is (1) a small craft storage facility delineated by a project area that was wholly or partially funded by the Harbors and Watercraft Revolving Fund, serving small craft for pleasure or commercial use or (2) any other marina with similar sized boat slips. For the purposes of this part, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a “marine facility.”

History.—Stats. 1991, Ch. 115, in effect January 1, 1992, substituted “, (1) is” for “is, (1)” after “unless the facility” in the first sentence; added “site, small craft marina” after “nursery, logging” in the second sentence; and added “For the purposes of this part, a small craft . . . sized boat slips.” as the third sentence.

46017. **“Marine terminal”**. “Marine terminal” means any marine facility used for transferring crude oil or petroleum products to or from tankers or barges. For the purposes of this part, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

46018. **“Marine waters”**. “Marine waters” means those waters subject to tidal influence, including the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento. Other waterways upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet, are not “marine waters.”

46019. **“Operator”**. (a) “Operator” means any of the following:  
(1) Any person who owns, operates, charters by demise, or leases a vessel.  
(2) Any person who owns or operates a marine facility.

(3) Any person who owns or operates a marine pipeline.

(4) Any person who owns or operates a refinery.

(b) “Operator” does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility. Also, “operator” does not include any person who owns the land beneath a marine facility or the facility itself if the person is not involved in the operation of the facility.

46020. **“Person”**. “Person” means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. “Person” also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

History.—Stats. 1994, Ch. 1200, in effect September 30, 1994, added “limited liability company,” after “partnership.”

46021. **“Petroleum products”**. “Petroleum products” means any liquid hydrocarbon at atmospheric temperature and pressure that is the product of the fractionation, distillation, or other refining or processing of crude oil and that is used as, useable as, or may be refined as, a fuel or fuel blendstock, including, but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and alcohol fuels containing petroleum products.

46022. **“Pipeline”**. “Pipeline” means any pipeline used at any time to transport crude oil or petroleum products.

46023. **“Refinery”**. “Refinery” means a facility or location which refines crude oil, including condensate and natural gasoline, into petroleum products, lubricating oils, coke, or asphalt.

46024. **“Responsible party” or “party responsible”**. “Responsible party” or “party responsible” means any of the following:

(a) The owner or transporter of crude oil or petroleum products or a person or entity accepting responsibility for the crude oil or petroleum products.

(b) The owner, operator, or lessee of, or person who charts by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

46025. **“Spill”**. “Spill” means any release of at least one barrel of crude oil or petroleum products into marine waters which is not authorized by any federal, state, or local government entity.

46026. **“State Interagency Oil Spill Committee”**. “State Interagency Oil Spill Committee” means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of the Government Code.

46027. **“State oil spill contingency plan”**. “State oil spill contingency plan” means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of the Government Code.

46028. **“Tanker”**. “Tanker” means any self-propelled, waterborne vessel, constructed or adapted for the carriage of crude oil or petroleum products in bulk or in commercial quantities as cargo.

46029. **“Vessel”**. “Vessel” means a tanker or barge as defined in this chapter.

CHAPTER 2. OIL SPILL PREVENTION AND ADMINISTRATION FEE  
AND OIL SPILL RESPONSE FEE

- Article 1. Imposition of Fee. §§ 46051-46054.  
2. Registration. § 46101.

Article 1. Imposition of Fee

- § 46051. Administration and collection of oil spill prevention and administration fee.  
§ 46052. Administration and collection of oil spill response fee.  
§ 46053. Unremitted fees deemed debts to State.  
§ 46054. Advance notification of whether fee imposed.

46051. **Administration and collection of oil spill prevention and administration fee.** The fee imposed pursuant to Section 8670.40 of the Government Code shall be administered and collected by the board in accordance with this part.

46052. **Administration and collection of oil spill response fee.** The fee imposed pursuant to Section 8670.48 of the Government Code shall be administered and collected by the board in accordance with this part.

46053. **Unremitted fees deemed debts to State.** Any fees collected from an owner of crude oil or petroleum products pursuant to Section 46051 or 46052 which have not been remitted to the board shall be deemed a debt owed to the State of California by the person required to collect and remit fees.

46054. **Advance notification of whether fee imposed.** (a) Whenever the administrator, in consultation with the board, estimates that the amount in the Oil Spill Response Trust Fund, collected pursuant to Section 46052, will reach the amount specified in subdivision (a) of Section 46012, and the money in that fund is not required for the purposes specified in subdivision (k) of Section 8670.48 of the Government Code, the board shall notify the feepayers that, as of the first of the month following the notification, the fee will not be imposed. In no event shall the fee cease to be imposed if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) of Chapter 7.4 of Division 1 of Title 2 of the Government Code, and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid,

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unless the Treasurer has certified to the administrator that the continued imposition of the fee is not required for the purposes specified in paragraph (7) of subdivision (k) of Section 8670.48 of the Government Code.

(b) Whenever the fee has ceased to be imposed in accordance with subdivision (a) and the administrator, in consultation with the board, determines that either (1) the amount in the Oil Spill Response Trust Fund is less than or equal to 95 percent of the amount specified in subdivision (a) of Section 46012, or (2) additional money is required for the purposes specified in subdivision (k) of Section 8670.48 of the Government Code, the board shall notify the feepayers that, as of the first of the month following the notification, the fee will be imposed.

**History.**—Stats. 1992, Ch. 1312, in effect September 30, 1992, added “the” after “board estimates that” and substituted “oilspill” for “oil spill” after “not required for” in subdivision (a); substituted “fee has ceased . . . cleanup of oilspills” for “board estimates that the Oil Spill Response Trust Fund will contain less than the designated amount or additional moneys are required to pay for costs for cleanup of oil spills” after “Whenever the” in subdivision (b). Stats. 1992, Ch. 1314, in effect January 1, 1993, substituted “administrator, in consultation with the board,” for “board” after “Whenever the” in the first sentence of subdivision (a). Stats. 1993, Ch. 1190, in effect January 1, 1994, substituted “amount specified in . . . Section 8670.48” for “designated amount, and the moneys in that fund are not required for oil spill cleanups or to retire any debt assumed pursuant to Section 8670.53.15” after “will reach the” in the first sentence of subdivision (a), added “In no event . . . Section 8670.48 of the Government Code.” as the second sentence in subdivision (a), and substituted “is less than or . . . Section 8670.48” for “, collected pursuant to Section 46052, will equal five million dollars (\$5,000,000) or less than the designated amount, or (2) additional moneys are required to pay for costs for the cleanup of oil spills or to retire any debt assumed pursuant to Section 8670.53.15” after “Oil Spill Response Trust Fund” in subdivision (b).

## Article 2. Registration

**46101. Persons required to register with Board.** Every person who operates an oil refinery in this state, a marine terminal in marine waters, or operates a pipeline across, under, or through marine waters or any pipeline to transport crude oil out of the state shall register with the board.

**History.**—Stats. 1992, Ch. 1313, in effect September 30, 1992, substituted “or any pipeline to transport crude oil out of the state” for “pursuant to Section 8670.2 of the Government Code” after “through marine waters”.

## CHAPTER 3. DETERMINATIONS

- Article 1. Returns and Payments. §§ 46151–46158.
- 1.1 Payment by Electronic Funds Transfer. §§ 46160–~~46163~~.
2. Deficiency Determinations. §§ 46201–46205.
3. Determinations If No Return Made. §§ 46251–46255.
4. Jeopardy Determinations. §§ 46301–46303.
5. Redeterminations. §§ 46351–46357.

### Article 1. Returns and Payments

- § 46151. Due date.
- § 46152. Returns and payments made for periods other than monthly.
- § 46153. Extension of time.
- § 46154. Penalties.
- § 46154.1. Penalties.
- § 46155. Interest rates. [Repealed.]
- § 46156. Relief of penalty; Excusable delay.
- § 46157. Relief of interest.
- § 46157.5. Relief of interest.
- § 46158. Relief of fees, penalty, or interest due to reliance on advice from the Board.

**46151. Due date for fees.** (a) The fees collected and administered under Sections 46051 and 46052 are due and payable to the board monthly on



or before the 25th day of the calendar month following the monthly period for which the fee is due. Each feepayer, on or before the 25th day of the month following each monthly period, shall make out a return in the form as prescribed by the board, which may include, but not be limited to, electronic media for the preceding monthly period, in the form as prescribed by the board, showing the information required to be reported by Sections 8670.40 and 8670.48 of the Government Code and any other information that the board determines to be necessary to carry out this part. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) The feepayer shall deliver the return, together with a remittance of the amount of fee due, if any, to the office of the board on or before the 25th day of the month following the monthly period for which the fee is due.

(c) In addition to the returns due pursuant to subdivision (a), each feepayer shall provide an annual information return, in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the information required to be reported by Section 8670.48 of the Government Code and any other information that the board determines to be necessary to carry out this part. The feepayer shall deliver the return containing the required information for the preceding calendar year to the office of the board on or before February 1st of each year. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Stats. 2002, Ch. 456 (AB 1936), in effect January 1, 2003, added “in the form . . . electronic media” after “out a return” in the second sentence of, added the third sentence to, subdivision (a); added “which may include, but not limited to, electronic media” after “by the board,” in the first sentence of, and added the third sentence to, subdivision (c).

**46152. Returns and payments made for periods other than monthly.** The board, if it determines it necessary in order to facilitate the administration of this part, may require returns and payments specified under Section 46151 to be made for periods other than monthly.

**46153. Extension of time.** (a) The board, for good cause, may extend, for a period not to exceed one month, the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time if a request for the extension is filed with the board within or prior to the period for which the extension may be granted.

(b) Any person to whom an extension is granted shall pay, in addition to the fee, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5 from the date on which the fee would have been due without the extension until the date of payment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “a period” after “may extend, for” and substituted “for the extension” for “therefore” after “if a request” in subdivision (a).

**46154. Penalties.** (a) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing

with Section 46201) or Article 3 (commencing with Section 46251), within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be collected became due and payable to the state until the date of payment.

(b) Any feepayer who fails to file a return in accordance with the due date set forth in subdivision (a) of Section 46151 or the due date established by the board in accordance with Section 46152, shall pay a penalty of 10 percent of the amount of the fee with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the fee for which the return is required for any one return.

**History.**—Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, substituted “Any person who fails to pay any fee to the state . . . became due and payable to the state until the date of payment” for “If the fee is not paid to the board within the time prescribed for the payment of the fee a penalty of 10 percent of the amount of the fee shall be added thereto on account of the delinquency” in subdivision (a); added subdivisions (b) and (c).

**46154.1. Penalties.** If the information return pursuant to subdivision (c) of Section 46151 is not filed within the time prescribed, a penalty of five hundred dollars (\$500) shall be assessed.

**History.**—Added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.

**46155. Interest rates.** [Repealed by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.]

**46156. Relief of penalty; Excusable delay.** (a) If the board finds that a person’s failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 46154, 46160, 46251, and 46356.

(b) Except as provided in subdivision (c) any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

**History.**—Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, substituted “Except as provided in subdivision (c) any” for “Any” before “person seeking to be relieved” in subdivision (b); added subdivision (c).

**46157. Relief of interest.** (a) If the board finds that a person’s failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 46153, 46154, 46160, and 46253.

(b) Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

**History.**—Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, substituted “46154, 46160” for “46155” after “Sections 46153,” in subdivision (a).

**46157.5. Relief of interest.** (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the fee payer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during fee periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999 (AB 1638), in effect January 1, 2000. Stats. 2001, Ch. 251 (AB 1123), substituted “this part” for “Sections 46155 and 46253” in subdivision (a), effective January 1, 2002.

**46158. Relief of fees, penalty, or interest due to reliance on advice from Board.** (a) If the board finds that a person’s failure to make a timely report or payment is due to the person’s reasonable reliance on written advice from the board, the person may be relieved of the fees imposed or administered under this part and any penalty or interest added thereto.

(b) For purposes of this section, a person’s failure to make a timely report or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to the fee under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the fee, or stating the conditions under which the activity or transaction is subject to the fee.

(3) The liability for fees applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board’s regulations, or a final decision of a court, which renders the board’s earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person’s written request to the board and a copy of the board’s written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

Article 1.1. Payment by Electronic Funds Transfer \*

§ 46160.	Electronic funds transfer payments.
§ 46161.	Relief of Penalty.
§ 46162.	Definitions.
§ 46163.	Electronic filing.

46160. **Electronic funds transfer payments.** (a) Any person whose estimated fee liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 46151). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 46201) or Article 3, (commencing with Section 46251), within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be collected became due and payable to the state until the date of payment.

\* Added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 46154.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

**46161. Relief of penalty.** If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 46160. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

**46162. Definitions.** (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of the fee. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) "Fedwire transfer" means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 46160 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

46163. **Electronic filing.** (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be signed, valid original document, including upon reproduction to a paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

History.—Added by Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003.

## Article 2. Deficiency Determinations

- § 46201. Deficiency determinations; Interest; Penalty.
- § 46202. Notice of deficiency determination.
- § 46203. Limitations; Deficiency determinations.
- § 46204. Limitations; Deficiency determinations; Decedents.
- § 46205. Waiver.

**46201. Deficiency determinations; Interest; Penalty.** (a) If the board is dissatisfied with the return filed or the amount of fee paid to the state by any feepayer, the board may compute and determine the amount to be paid, based upon any information available to it. One or more deficiency determinations may be made of the amount of fee due for one or for more than one period. When a business is discontinued, a determination may be made at any time thereafter, within the period specified in Section 46204, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) The amount of fee so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the fee, or any portion thereof, became due and payable until the date of payment.

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(c) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or regulations adopted pursuant thereto, a penalty of 10 percent of the amount of the determination shall be added, plus interest as provided in subdivision (b).

(d) If any part of the deficiency for which a determination of an additional amount due is made is found to be occasioned by fraud or an intent to evade this part or regulations adopted pursuant thereto, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (b).

46202. **Notice of deficiency determination.** The board shall give to the feepayer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the feepayer at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in a United States

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Post Office, or a mailbox, subpost office, substation or mail chute, or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

**46203. Limitations; Deficiency determinations.** Except in the case of fraud, intent to evade this part or regulations adopted pursuant thereto, or failure to make a return, every notice of deficiency determination shall be given within three years after the 25th day of the month following the period for which the return was due or within three years after the return was filed, whichever period expires later. In the case of failure to make a return, the notice of determination shall be mailed within eight years after the date the return was due.

**46204. Limitations; Deficiency determinations; Decedents.** In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the fee or any portion thereof.

**46205. Waiver.** If before the expiration of the time prescribed in Section 46203 for the mailing of a notice of deficiency determination the feepayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

### Article 3. Determinations If No Return Made

- § 46251. Determination; failure to file.
- § 46252. Offsets.
- § 46253. Interest.
- § 46254. Penalties.
- § 46255. Notice of determination.

**46251. Determination; failure to file return.** If any fee payer fails to make a return, the board shall make an estimate of the amount of fee to be paid. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the board's possession or may come into its possession. Upon the basis of this estimate, the board shall compute and determine the amount of fee or other amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 percent thereof. One or more determinations

may be made for one or more than one period. When a business is discontinued, a determination may be made at any time thereafter, within the periods specified in Section 46203, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

**46252. Offsets.** In making a determination, the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

**46253. Interest.** The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from date the amount of the fee, or any portion thereof, became due and payable until the date of payment.

**46254. Penalties.** If the failure of any person to file a return is due to fraud or an intent to evade this part or regulations adopted pursuant thereto, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 10 percent penalty provided in Section 46251.

**46255. Notice of determination.** Promptly after making its determination, the board shall give to the person written notice of the estimate, determination, and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

#### Article 4. Jeopardy Determinations

- § 46301. Jeopardy determinations; Interest and penalty.
- § 46302. Petition for redetermination; Security.
- § 46303. Administrative hearing.

**46301. Jeopardy determinations; Interest and penalty.** If the board believes that the collection of any amount of fee will be jeopardized by delay, it shall thereupon make a determination of the amount of fee due, noting that fact upon the determination, and the amount of fee shall be immediately due and payable. If the amount of the fee, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the taxpayer of notice of the determination, the determination becomes final, and the delinquency penalty and interest provided in Sections 46154 and 46155 shall attach to the amount of fee specified therein.

**46302. Petition for redetermination; Security.** The feepayer against whom a jeopardy determination is made may file a petition for the redetermination thereof, pursuant to Article 5 (commencing with Section 46351), with the board within 10 days after the service upon the feepayer of

notice of the determination, but he or she shall, within the 10-day period, deposit with the board such security as it determines to be necessary to ensure compliance with this part. The security may be sold by the board at public sale if it becomes necessary in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed for service of notice by Section 46202. Upon any such sale, the surplus, if any, above the amount due under this part shall be returned to the person who deposited the security.

**46303. Administrative hearing.** (a) In accordance with such rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

- (1) To establish that the determination is excessive.
- (2) To establish that the sale of property that may be seized after issuance of the jeopardy determination, or any part thereof, shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.
- (3) To request the release of all or a part of the property to the person.
- (4) To request a stay of collection activities.

(b) The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. The person shall not be required to post any security in order to file the application and to obtain the hearing. However, if the person does not deposit, within the 10-day period prescribed in Section 46302, such security as the board may determine to be necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except the sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect the provisions of Section 46301 relating to the finality date of the determination or to penalty or interest.

## Article 5. Redeterminations

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| § 46351. | Petition for redetermination.           |
| § 46352. | Form and content of petition.           |
| § 46353. | Oral hearing.                           |
| § 46354. | Decrease or increase of determinations. |
| § 46355. | Finality date of order or decision.     |
| § 46356. | Due date of determination; Penalty.     |
| § 46357. | Service of notice.                      |

**46351. Petition for redetermination.** Any person from whom an amount is determined to be due under Article 2 (commencing with Section

46201) or Article 3 (commencing with Section 46251), or any person directly interested, may petition for a redetermination thereof within 30 days after service upon him or her of notice of the determination. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration thereof.

**46352. Form and content of petition.** Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

**46353. Oral hearing.** If a petition for redetermination is filed within the 30-day period, the board shall reconsider the amount determined to be due, and, if the person has so requested in his or her petition, the board shall grant him or her an oral hearing and shall give him or her 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

**46354. Decrease or increase of determinations.** The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by subdivision (d) of Section 46201 or Section 46254 applies to the amount of the determination as originally made or as increased, the claim for increase shall be asserted within eight years after the date the amount of fee for the period for which the increase is asserted was due.

**46355. Finality date of order or decision.** The order or decision of the board upon a petition for redetermination shall become final 30 days after service upon the petitioner of notice thereof.

**46356. Due date of determination; Penalty.** All amounts determined to be due by the board under Article 2 (commencing with Section 46201) or Article 3 (commencing with Section 46251) are due and payable at the time they become final, and, if not paid when due and payable, a penalty of 10 percent of the amount determined to be due shall be added to the amount due and payable.

**46357. Service of notice.** Any notice required by this article shall be served personally or by mail in the same manner as prescribed for service of notice by Section 46202.

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CHAPTER 4. COLLECTION OF FEE

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| Article 1. | Security for Fee. §§ 46401– <del>46407</del> .         |  |
| 2.         | Suit for Fee. §§ 46411– <del>46412</del> .             |  |
| 3.         | Judgment for Fee. §§ 46421–46422.                      |  |
| 4.         | Warrant for Collection. §§ 46431–46433.                |  |
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Article 1. Security for Fee

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| § 46401. | Security.  |  |
| § 46402. | Notice to creditors.   |  |
| § 46403. | Transfer or disposition of credits, property, or debts after notice. |  |
| § 46404. | Advisement of Board after notice; Bank deposits.                     |  |
| § 46405. | Liability for transfer or disposition after notice.                  |  |
| § 46406. | Notice of levy.  |  |
| § 46407  | <u>Employer withheld earnings.</u>                                   |  |

46401. **Security.** (a) The board, whenever it determines it to be necessary to ensure compliance with this part, may require any person subject to this part to place with it such security as the board may determine to be reasonable, taking into account the circumstances of that person. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the board in trust to be used solely in the manner provided by this section. The board may sell the security at public auction if it becomes necessary to do so in order to recover any fee or any amount required to be collected, including any interest or penalty due. Notice of the sale shall be served upon the person who placed the security personally or by mail.

(b) If service is made by mail, service shall be addressed to the person at his or her address as it appears in the records of the board. Service shall be made at least 30 days prior to the sale in the case of personal service, and at least 40 days prior to the sale in the case of service by mail. Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at private sale at a price not lower than the prevailing market price thereof. Upon any sale, any surplus above the amounts due shall be returned to the person who placed the security.

46402. **Notice to creditors.** If any feepayer is delinquent in the payment of any obligations imposed by this part, or in the event a determination has been made against the feepayer which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail, to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the feepayer, or owing any debts to the feepayer. In the case of any state officer,

department, or agency, the notice shall be given to the officer, department, or agency prior to the time it presents the claim of the delinquent taxpayer to the Controller.

**46403. Transfer or disposition of credits, property, or debts after notice.** After receiving the notice, the person so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires first.

**46404. Advisement of Board after notice; Bank deposits.** All persons so notified shall immediately, after receipt of the notice, advise the board of all credits, other personal property, or debts in their possession, under their control, or owing by them. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, to be effective, shall state the amount, interest, and penalty due from the person and shall be delivered or mailed to the branch or office of the bank at which the deposit is carried at which the credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of the amount, interest, and penalty due from the person.

**46405. Liability for transfer or disposition after notice.** If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he or she shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given, if solely by reason of that transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

*Text of section operative through June 30, 2001*

**46406. Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a fee payer or other person liable for any amount under this part to withhold from those credits or other personal property the amount of any fee, interest, or penalties due from that fee payer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the fee payer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the fee payer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the fee payer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Stats. 1993, Ch. 1113, in effect January 1, 1994, substituted "the" for "such" after "withheld to the board" in subdivision (a) and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "payments, credits other than payments," for "credits" after "their control, any" in the first sentence and added "The notice of . . . in subdivision (b)." as the second sentence of subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d).

### *Text of section operative July 1, 2001*

**46406. Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a feepayer or other person liable for any amount under this part to withhold from those credits or other personal property the amount of any fee, interest, or penalties due from that feepayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time



it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the feepayer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the feepayer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Stats. 1993, Ch. 1113, in effect January 1, 1994, substituted "the" for "such" after "withheld to the board" in subdivision (a) and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "payments, credits other than payments," for "credits" after "their control, any" in the first sentence and added "The notice of . . . in subdivision (b)." as the second sentence of subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d). Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, but operative July 1, 2001, substituted "paragraph (29) of subdivision (c) of Section 9102" for "Section 9105" after "as defined in" in subdivision (d).

**46407. Employer withheld earnings.** (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines, upon receiving information from a fee payer or other person liable for any amount under this part, that the person's employer withheld earnings for taxes pursuant to Section 46406 and failed to remit the withheld earnings to the board, the employer shall be liable



for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

## Article 2. Suit for Fee

§ 46411. Legal actions to collect deficiencies.

§ 46412. Certificate of deficiency; Writ of attachment.

**46411. Legal actions to collect deficiencies.** The board may bring any legal actions as are necessary to collect any deficiency in the fee required to be paid, and, upon the board's request, the Attorney General shall bring the actions.

**46412. Certificate of deficiency; Writ of attachment.** In any suit brought to enforce the rights of the state with respect to fees, a certificate by the board showing the delinquency shall be prima facie evidence of the levy

of the fee, of the delinquency of the amount of fee, interest, and penalty set forth therein, and of compliance by the board with all provisions of this part in relation to the computation and levy of the fee. In the action, a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure.

### Article 3. Judgment for Fee

§ 46421. Liens; Perfection of, and enforceability.

§ 46422. Release of liens.

**46421. Liens; Perfection of, and enforceability.** (a) If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable lien. The lien shall be subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the amount would have been due and payable.

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board.

(3) For amounts determined under Section 46301 pertaining to jeopardy assessments, the date the notice of the board’s finding is mailed or issued.

(4) For all other amounts, the date the assessment is final.

**46422. Release of liens.** (a) If the board determines that the amount of fee, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the fee, interest, and penalties, the board may at any time release all or any portion of the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds that the liability represented by the lien imposed under this article, including any interest accrued thereon, is legally unenforceable, the board may release the lien.

(c) A certificate by the board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

Article 4. Warrant for Collection

- § 46431. Warrant; Time of issuing.
- § 46432. Fees and expenses.
- § 46433. Collection of fees.

46431. **Warrant; Time of issuing.** At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or the last recording or filing of a notice of lien under Section 7171 of the Government Code, the board, or its authorized representative, may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of, and sale pursuant to, a writ of execution.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to any sheriff” in the second sentence.

46432. **Fees and expenses.** The board may pay or advance to the sheriff or marshal, the same fees, commissions, and expenses for their services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to the sheriff” in the first sentence.

46433. **Collection of fees.** The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him or her by virtue of the warrant or in any other manner provided in this part for the collection of the fee.

Article 5. Seizure and Sale

- § 46441. Seizure and sale.
- § 46442. Notice of sale.
- § 46443. Bill of sale; Deed.
- § 46444. Disposition of excess proceeds.

46441. **Seizure and sale.** Whenever any feepayer is delinquent in the payment of the fee, the board or its authorized representative may seize any property, real or personal, of the feepayer, and sell at public auction the property seized, or a sufficient portion thereof, to pay the fee due, together with any penalties imposed for the delinquency and all costs that have been incurred on account of the seizure and sale.

46442. **Notice of sale.** (a) Notice of the sale, and the time and place thereof, shall be given to the delinquent feepayer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the feepayer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and depositing it in the United States

registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part hereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(1) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is be sold.

(2) One conspicuous place on the property.

(b) The notice shall contain a description of the property to be sold, a statement of the amount due, including fees, interest, penalties, and costs, the name of the feepayer, and the further statement that unless the amount due is paid on or before the time fixed in the notice of the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

**46443. Bill of sale; Deed.** At the sale, the property shall be sold by the board, or by its authorized agent, in accordance with law and the notice, and the board shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser subject to a right of redemption as prescribed in the Code of Civil Procedure upon sales of real property on execution. The unsold portion of any property seized may be left at the place of sale at the risk of the feepayer.

**46444. Disposition of excess proceeds.** If, upon the sale, the moneys received exceed the amount of all fees, penalties, and costs due the state from the feepayer, the board shall return the excess to him or her and obtain his or her receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest, the board shall withhold any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If for any reason the receipt of the feepayer is not available, the board shall deposit the excess moneys with the Controller, as trustee for the owner, subject to the order of the feepayer, his or her heirs, successors, or assigns.

History.—Stats. 1996, Ch. 860, in effect January 1, 1997, substituted “to the excess moneys” for “thereto” after “the respective parties” in the second sentence and substituted “Controller” for “Treasurer” after “moneys with the” in the last sentence.

## Article 6. Successor Withholding and Liability

§ 46451. Obligation of successor to withhold purchase price.

§ 46452. Liability of successor for failure to withhold from purchase price; Issuance of certificate.

§ 46453. Certificate issued after payment of all amounts due.

§ 46454. Enforcement of successor's obligation; Service of notice; Petition for reconsideration.

**46451. Obligation of successor to withhold purchase price.** If any person liable for any amount under this part sells out his or her business or

stock of goods or quits the business, his or her successor or assigns shall withhold from the purchase price an amount sufficient to cover that amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

**46452. Liability of successor for failure to withhold from purchase price; Issuance of certificate.** (a) If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she shall become personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price valued in money.

(b) (1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice to the purchaser at his or her address as it appears on the records of the board of the amount that is required to be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date of the sale of the business or stock of goods.

(C) The date the former owner's records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) shall release the purchaser from any further obligation to withhold from the purchase price under this article. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business or stock of goods.

**46453. Certificate issued after payment of all amounts due.** The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board.

**46454. Enforcement of successor's obligation; Service of notice; Petition for reconsideration.** The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 46351) of Chapter 3. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. This chapter, with respect to the collection of any amount required to be paid under this part, shall apply when the notice becomes final.

Article 7. Miscellaneous

§ 46461.	Remedies cumulative.
§ 46462.	Remedies.
§ 46463.	Furnishing of partnership agreement.
§ 46464.	Installment payment agreement.
§ 46464.5.	Installment payment agreement; annual statement.

46461. **Remedies cumulative.** The remedies of the state provided for in this chapter are cumulative, and no action taken by the board or the Attorney General constitutes an election by the state or any of its officers to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

46462. **Remedies.** (a) The amounts required to be paid by any person under this part, together with interest and penalties, shall be satisfied first in any of the following cases:

(1) Whenever the person is insolvent.

(2) Whenever the person makes a voluntary assignment of his or her assets.

(3) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.

(4) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

(b) This section does not give the state a preference over a lien or security interest which was recorded or perfected prior to the time when the state records or files its lien as provided in Section 7171 of the Government Code.

(c) The preference given to the state by this section is subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

46463. **Furnishing of partnership agreement.** The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.

46464. **Installment payment agreement.** (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall

include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fees, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination become final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 46356.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision (e).

**46464.5. Installment payment agreement; annual statement.** The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 46464 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

## CHAPTER 5. OVERPAYMENTS AND REFUNDS

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|------------|--|
| Article 1. | Claim for Refund. §§ 46501–46507.              |
| 2.         | Suit for Refund. §§ 46521–46528.               |
| 3.         | Recovery of Erroneous Refunds. §§ 46541–46544. |
| 4.         | Cancellations. § 46551.                        |

### Article 1. Claim for Refund

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|------------|---|
| § 46501.   | Credits and refunds.  |
| § 46501.5. | Excess fee reimbursement.                                     |
| § 46502.   | Claim; Limitation periods.                                    |
| § 46502.1. | <u>Claim limitation period; financially disabled.</u>         |
| § 46503.   | Claim requirements.   |
| § 46504.   | Effects of failure to file claim.                             |
| § 46505.   | Notice of action on claim.                                    |
| § 46506.   | Interest on overpayments.                                     |
| § 46507.   | Interest disallowed for intentional or careless overpayments. |

**46501. Credits and refunds.** (a) If the board determines that any amount of fee, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records and certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid. The



excess amount collected or paid shall be credited on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors.

(b) Any proposed determination by the board that is in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “its records and certify” for “the records of the board and shall certify to the State Board of Control” after “that fact in” in the first sentence of, and substituted “The” for “If approved by the State Board of Control, the” before “excess amount collected” in the second sentence of, subdivision (a); and completely rewrote subdivision (b) which previously set a maximum threshold of \$50,000 for which the board would not have to obtain the approval of the State Board of Control.

**46501.5. Excess fee reimbursement.** When an amount represented by a person who is a feepayer under this part to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same activity from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

History.—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997.

**46502. Claim; Limitation periods.** (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 46201), Article 3 (commencing with Section 46251) or Article 4 (commencing with Section 46301) of Chapter 3, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 46205.

(b) A refund may be approved by the board for any period for which a waiver is given pursuant to Section 46205 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) If the board has made a determination under Article 2 (commencing with Section 46201), Article 3 (commencing with Section 46251), or Article 4 (commencing with Section 46301) of Chapter 3, and if a person’s claim for



refund was filed timely within the applicable six-month period specified by subdivision (a) or (b), that claim for refund shall be deemed to also apply to that person's later payments in full or partial satisfaction of that determination.

History.—Stats. 2001, Ch. 543 (SB 1185), substituted “after” for “within” and “from the date” for “after” in subdivision (a), effective January 1, 2002.

**46502.1. Claim limitation period; financially disabled.** (a) The limitation period specified in Section 46502 shall be suspended during any period of the person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse of any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

**46503. Claim requirements.** Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

**46504. Effects of failure to file claim.** Failure to file a claim within the time prescribed in this article constitutes a waiver of all demands against the state on account of the overpayment.

**46505. Notice of action on claim.** Within 30 days after disallowing any claim, in whole or in part, the board shall serve written notice of its action on the claimant, the service to be made as provided by Section 46202.

**46506. Interest on overpayments.** Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the 26th day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 25th day of the calendar month following the date upon which the claimant, if he or she has not already filed a claim,

is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the fee or amount against which the credit is applied.

History.—Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted “26th day of . . . In addition a” for “due date of the return for the period for which the overpayment was made, but no” after “6591.5, from the” in the first paragraph. Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added “calendar” after “day of the” in the first sentence of the first paragraph and added “, if he or she has not already filed a claim,” after “which the claimant” in subdivision (a).

**46507. Interest disallowed for intentional or careless overpayments.**

(a) If the board determines that any overpayment has been made intentionally or by reasons of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

History.—Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added subdivision designation “(a)” and added subdivision (b).

**Article 2. Suit for Refund**

§ 46521.	Immunity from suits to prevent collection.
§ 46522.	Necessity of refund claim.
§ 46523.	Action for refund; Limitation.
§ 46524.	Effect of failure to timely mail notice of action.
§ 46525.	Effect of failure to timely bring suit.
§ 46526.	Disposition of amount of judgment.
§ 46527.	Interest allowed on judgment.
§ 46528.	Judgment for assignee forbidden.

**46521. Immunity from suits to prevent collection.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any office of the state to prevent or enjoin the collection of any fee sought to be collected.

**46522. Necessity of refund claim.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed.

**46523. Action for refund; Limitation.** Within 90 days after the mailing of the notice of the board’s action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

**46524. Effect of failure to timely mail notice of action.** If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board, consider

the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

**46525. Effect of failure to timely bring suit.** Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the state on account of any alleged overpayments.

**46526. Disposition of amount of judgment.** If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any fees due from the plaintiff, and the balance shall be refunded to the plaintiff.

**46527. Interest allowed on judgment.** In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

**46528. Judgment for assignee forbidden.** A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any fee paid when the action is brought by or in the name of an assignee of the feepayer paying the fee or by any person other than the person who has paid the fee.

As used in this section, "assignee" does not include a person who has acquired the business of the feepayer which gave rise to the fees and who is thereby a successor in interest to the feepayer.

### Article 3. Recovery of Erroneous Refunds

§ 46541.	Erroneous refunds; Actions.
§ 46542.	Place of trial.
§ 46543.	Rules of procedure, etc.
§ 46544.	Interest on erroneous refunds.

**46541. Erroneous refunds; Actions.** (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 46201) or Article 4 (commencing with Section 46301) of Chapter 3. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

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**History.**—Stats. 1998, Ch. 609 (Ch. 2232), in effect January 1, 1999, added subdivision designation “(a)”, substituted “that” for “which” after “or part thereof”, and deleted “”, and the action shall be tried in the County of Sacramento unless the court, with the consent of the Attorney General, orders a change of place of trial. The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings” after “State of California” in subdivision (a); and added subdivision (b).

**Note.**—Sec. 61, of Stats. 1998, Ch. 609 (SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

**46542. Place of trial.** In any action brought pursuant to subdivision (a) of Section 46541, the court may, with the consent of the Attorney General, order a change in the place of trial.

**History.**—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

**46543. Rules of procedure, etc.** The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 46541, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

**History.**—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

**46544. Interest on erroneous refunds.** (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of fees nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 46541, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 46541 on or after January 1, 2000.

**History.**—Added by Stats. 1999 (AB 1638), in effect January 1, 2000.

#### Article 4. Cancellations

**46551. Cancellation of determinations.** (a) If any amount has been illegally determined, either by the person filing the return or by the board, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made and authorize the cancellation of the amount upon the records of the board.

(b) Any proposed determination by the board that is in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

**History.**—Stats. 1995, Ch. 555, in effect January 1, 1996, added subdivision letter (a), deleted “in excess of fifty thousand dollars (\$50,000)” after “If any amount”, deleted “to the State Board of Control” after “board shall certify”, substituted “and” for “.” If the State Board of Control approves, it shall” after “determination was made”, and deleted “If an amount not exceeding fifty thousand dollars (\$50,000) has been illegally determined, either by the person filing a return or by the board, the board, without certifying this fact to the State Board of Control, shall authorize the cancellation of the amount upon the records of the board.” as the third sentence, in subdivision (a); and added subdivision (b).

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CHAPTER 6. ADMINISTRATION

- Article 1. General Provisions. §§ 46601-~~46606~~.  
2. The California Taxpayers' Bill of Rights. §§ 46611-46627.

Article 1. General Provisions

- § 46601. Enforcement by Board; Rules and regulations.  
§ 46602. Requirement to keep records.  
§ 46603. Examination of records.  
§ 46604. Employees and representatives of Board.  
§ 46605. Certificate of notice.  
§ 46606. Information confidential; tax preparer.

**46601. Enforcement by Board; Rules and regulations.** The board shall enforce this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part.

**46602. Requirement to keep records.** Every feepayer shall keep such records, receipts, invoices, and other pertinent papers in such form as the board may require.

**46603. Examination of records.** The board may make such examinations of the books and records of any feepayer as it may determine to be necessary in carrying out this part.

**46604. Employees and representatives of Board.** The board may employ accountants, auditors, investigators, and other expert and clerical assistance necessary to enforce its powers and perform its duties under this part.

**46605. Certificate of notice.** A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

**46606. Information confidential; tax preparer.** (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 3 (commencing with Section 46151), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

## Article 2. The California Taxpayers' Bill of Rights \*

- § 46611. Administration.
- § 46612. Taxpayers' Rights Advocate.
- § 46613. Education and information program.
- § 46614. Annual hearing for taxpayer proposals.
- § 46615. Preparation of statements by board.
- § 46616. Limit on uses of revenue collected or assessed.
- § 46617. Evaluation of employee's contact with taxpayers.
- § 46618. Plan to timely resolve claims and petitions.
- § 46619. Procedures relating to review conferences.
- § 46620. Reimbursement to taxpayer.
- § 46621. Investigation for nontax administration purposes.
- § 46622. Settlement authority.
- § 46623. Release of levy.
- § 46623.5. Return of property.
- § 46624. Exemption from levy.
- § 46625. Claim for reimbursement of bank charges by taxpayer.
- § 46626. Preliminary notice to taxpayer prior to lien.
- § 46627. Disregard by board employee or officer.

46611. **Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

46612. **Taxpayers' Rights Advocate.** (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of feepayer complaints and problems, including any feepayer complaints regarding unsatisfactory treatment of feePAYERS by board employees, and staying actions where feePAYERS have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

46613. **Education and information program.** (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Fee payers newly registered with the board.

(2) Board audit and compliance staff.

\* Added by Stats. 1995, Ch. 497, in effect January 1, 1996.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered fee payers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of fee payer educational materials currently produced by the board that explain the most common areas of fee payer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to fee payer activities and areas of recurrent feepayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, substituted “fee payer” for “feepayer” throughout the section and added “and compliance” after “program for audit” in paragraph (4) of subdivision (b).

**46614. Annual hearing for taxpayer proposals.** The board shall conduct an annual hearing before the full board where industry representatives and individual fee payers are allowed to present their proposals on changes to the Oil Spill Response, Prevention, and Administration Fee Law that may further improve voluntary compliance and the relationship between fee payers and government.

**46615. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and fee payers. As appropriate, statements shall be provided to fee payers with the initial notice of audit, the notice of proposed additional fees, any subsequent notice of fees due, or other substantive notices. Additionally, the board shall include this language for statements in the annual fee information bulletins that are mailed to fee payers.

**46616. Limit on uses of revenue collected or assessed.** (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**46617. Evaluation of employee’s contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee’s or officer’s performance with respect to his or her contact with



feepayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

**46618. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Department of Fish and Game, the Taxpayers' Rights Advocate, and other interested feepayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

**46619. Procedures relating to review conferences.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the feepayer.

(b) The conference may be recorded only if prior notice is given to the feepayer and the feepayer is entitled to receive a copy of the recording.

(c) The feepayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

**46620. Reimbursement to taxpayer.** (a) Every fee payer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The fee payer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the fee payer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.



(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

**History.**—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “within one year . . . board becomes final” after “with the board” in paragraph (1) of, and substituted “in an amount . . . its sole discretion” for “which shall be determined by the board” after “to the hearing,” in paragraph (3) of, subdivision (a), substituted “board staff has . . . substantially justified” for “feepayer has established that the position of the board staff was not substantially justified” after “consider whether the” in subdivision (b), and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, substituted “the notice of determination, jeopardy determination, or a claim for refund” for “filing petitions for redetermination and claims for refund” after “incurred after the date of” in subdivision (c) paragraph (1).

**46621. Investigation for nontax administration purposes.** (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nonfee administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include underground storage tank fee violations.

(e) For the purposes of this section:

(1) “Investigation” means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) “Surveillance” means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

**46622. Settlement authority.** (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation

and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of fee in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

- (1) The name or names of the feepayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.
- (4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation of settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

**46623. Release of levy.** (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of the funds pursuant to a levy or the notice to withhold, may order the return of any amount up to one thousand five hundred dollars (\$1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the feepayer or his or her spouse and dependents.

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

**46623.5. Return of property.** (a) Except in any case where the board finds collection of the fee to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the fee payer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The fee payer has entered into and is in compliance with an installment payment agreement pursuant to Section 46464 to satisfy the fee liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 46625.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

**46624. Exemption from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the

collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

**46625. Claim for reimbursement of bank charges by taxpayer.**

(a) A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees that are incurred by the feepayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with either a levy or instructions in a notice to withhold, and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. Bank charges include only those charges that are paid by the feepayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement pursuant to this section shall file a claim with the board that shall be in the form as may be prescribed by the board. The board shall not grant a claim unless it determines that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold resulted from board error.

(2) Prior to the levy or notice to withhold, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation that was sufficient to establish the feepayer's position. The requirement of this paragraph may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold that is asserted to be erroneous. The board shall respond to a claim filed pursuant to this section within 30 days of receipt. If the board denies a claim, the taxpayer shall be notified in writing of the reason or reasons for denial.

History.—Stats. 2001, Ch. 543 (SB 1185), added “and any other . . . check charge fees” after “of bank charges” in subdivision (a), added “and third party” prior to “charges include a” in subdivision (a), added “or third party’s” after “a financial institution’s” in subdivision (a), added “or third party” after “the financial institution” in subdivision (a), effective January 1, 2002.

**46626. Preliminary notice to taxpayer prior to lien.** (a) At least 30 days prior to the filing or recording of a lien pursuant to either Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the fee payer a preliminary notice of lien. The notice shall specify the board's statutory authority for filing or recording the lien, the earliest date on which the lien may be filed or recorded, and the remedies available to the fee payer to prevent the filing or recording of the lien. In the event liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 46301) of Chapter 3.

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(c) If the board determines that a lien was recorded in error, it shall mail a release to the fee payer and the entity that recorded the lien as soon as possible, but in no event later than seven days after this determination and the

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receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneously recorded lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the fee payer and the entity that recorded the lien.

(d) Upon issuing a release pursuant to subdivision (c), notice of that release shall be mailed to the taxpayer. Upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was recorded.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, substituted “fee payer” for “feepayer” throughout the section and added subdivision (e).

**46627. Disregard by board employee or officer.** (a) If any officer or employee of the board recklessly disregards board-published procedures, a feepayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Based on prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party’s case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the feepayer’s position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars

(\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a fee imposed under this part.

#### CHAPTER 7. DISPOSITION OF PROCEEDS

- § 46651. Manner of payment.
- § 46652. Source of refunds under this part.
- § 46653. Refunds of excess moneys.

**46651. Manner of payment.** All fees, interest, and penalties imposed and all amounts of fee required to be paid to the state pursuant to Sections 46051 and 46052 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Oil Spill Prevention and Administration Fund or the Oil Spill Response Trust Fund.

**46652. Source of refunds under this part.** The money in the Oil Spill Prevention and Administration Fund and the Oil Spill Response Trust Fund shall, upon order of the Controller, be drawn therefrom for refunds under this part.

**46653. Refunds of excess moneys.** Whenever the total amount in the Oil Spill Response Trust Fund, collected pursuant to Section 46052, exceeds the total of the amount specified in subdivision (a) of Section 46012 and any amounts determined by the administrator to be necessary to provide for the purposes specified in paragraphs (1) to (6), inclusive, of subdivision (k) of Section 8670.48 of the Government Code and, if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) of Chapter 7.4 of Division 1 of Title 2 of the Government Code, and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, any amounts the Treasurer has certified to the administrator are required for the purposes of paragraph (7) of subdivision (k) of Section 8670.48 of the Government Code, the administrator shall direct the board to provide refunds of the excess money. The board, as directed by the administrator, shall refund the excess money in that fund to each person who paid the fee to the state in proportion to the amount that person paid into the fund during the preceding 12 monthly reporting periods in which there was a fee due, including the month in which the fund exceeded the amount specified in subdivision (a) of Section 46012. If the amount of money in the fund exceeds the amount specified in this section by 10 percent or less, refunds need not be ordered by the administrator. Nothing in this section shall require the refund of excess fees more frequently than once each year.

History.—Stats. 1993, Ch. 1190, in effect October 11, 1993, added “total of the” after “exceeds the” and substituted “any amounts determined . . . of Section 8670.48” for “there are no outstanding liabilities for oil spill cleanups or requirements for debt retirement incurred pursuant to Section 8670.53.15” after “Section 46012 and” in the first sentence; added “, as directed by the administrator,” after “The board”, and substituted “monthly reporting periods . . . the fund exceeded” for “months prior to the fund exceeding” after “the preceding 12” in the second sentence; substituted “this section by 10” for “subdivision (a) of Section 46012 by 2” after “amount specified in” in the third sentence; and added “Nothing in this . . . once each year” to the end of the section.



CHAPTER 8. VIOLATIONS

§ 46701.	Criminal penalties.
§ 46702.	Penalties for other misconduct.
§ 46703.	Penalty for willful evasion or attempt to evade payment of fee.
§ 46704.	Penalty for misdemeanor violations.
§ 46705.	Penalty for felony violations.
§ 46706.	Statutes of limitations.

**46701. Criminal penalties.** Any person who refuses to furnish any return required to be made, or who refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor and subject to a fine in an amount not to exceed five hundred dollars (\$500) for each offense in the discretion of the court, together with costs of investigation and prosecution.

**46702. Penalties for other misconduct.** Any person who knowingly or willfully files a false return with the board, and any person who refuses to permit the board or any of its representatives to make any inspection or examination for which provision is made in this part, or who fails to keep records as prescribed by the board, or who fails to preserve those records for the inspection of the board for such time as the board determines to be necessary, or who alters, cancels, or obliterates entries in the records for the purpose of falsifying the records is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than one month nor more than six months, or by both that fine and imprisonment in the discretion of the court, together with costs of investigation and prosecution.

**46703. Penalty for willful evasion or attempt to evade payment of fee.** Any person who willfully evades or attempts in any manner to evade or defeat the payment of the fee imposed by this part is guilty of a felony.

**46704. Penalty for misdemeanor violation.** Every person convicted for a violation of this part for which another penalty or punishment is not specifically provided for in this part is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both that fine and imprisonment in the discretion of the court, together with costs of investigation and prosecution.

**46705. Penalty for felony violation.** Every person convicted of a felony for a violation of this part for which another punishment is not specifically provided for in this part shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment in state prison for not less than one year nor more than five years, or both that fine and imprisonment in the discretion of the court, together with cost of investigation and prosecution.

46706. **Statute of limitations.** Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of the offense.

CHAPTER 9. DISCLOSURE OF INFORMATION

46751. **Provision of information to Department of Fish and Game; Utilization of information; Unlawful use of information.** (a) The board shall provide any and all information obtained under this part to the Department of Fish and Game.

(b) The Department of Fish and Game and the board may utilize any information obtained pursuant to this part to develop data on oil spill prevention, abatement, and removal within the state. Notwithstanding any other provision of this section, the Department of Fish and Game may make oil spill prevention, abatement, and removal public.

(c) It shall be unlawful for the board, or any person having an administrative duty under Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code or Division 7.8 (commencing with Section 8750) of the Public Resources Code to make known, in any manner whatever, the business affairs, operations, or any other information pertaining to a feepayer which was submitted to the board in a report or return required by this part, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not expressly authorized by subdivision (a), subdivision (d), and this subdivision. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

(d) The board may furnish to any state or federal agency investigating violations of or enforcing any state or federal law related to crude oil and petroleum products any crude oil and petroleum products information in the possession of the board that is deemed necessary for the enforcement of those laws.

(e) Notwithstanding subdivision (c), the successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information regarding the determination of any unpaid fee or the amount of fees, interest, or penalties required to be collected or assessed.

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(f) Nothing in this section shall be construed as limiting or increasing the public's access to information on any aspect of oil spill prevention, abatement, and removal collected pursuant to other state or local laws, regulations, or ordinances.

**History.**—Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added “, subdivision (d),” after “authorized by subdivision (a)” in the first sentence of subdivision (c), relettered former subdivisions “(d)” and “(e)” as “(e)” and “(f)”, respectively, and added new subdivision “(d)”.

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**Note:** This law guide only contains pertinent sections of Division 1 of Title 2 of the Government Code relating to the Oil Spill Response and Administration. The following provisions have been omitted:

**Government Code Provisions**

<i>Chapter No.</i>	<i>Article</i>	<i>Section(s) Omitted</i>
Ch. 6.5	Article 3.5	All sections
Ch. 7.4	Article 1	None
	Article 2	All sections
	Article 3	All sections
	Article 4	All sections
	Article 5	All sections
	Article 5.5	All sections
	Article 6	None
	Article 7	8670.49, 8670.52, 8670.53
	Article 7.5	All sections
	Article 8	All sections
	Article 8.5	All sections
	Article 9	All sections
	Article 10	All sections

**Public Resources Code Provisions**

Ch. 1	All sections
Ch. 2	All sections

## GOVERNMENT CODE PROVISIONS

### Relating to the Oil Spill Response and Administration.

[Added Stats. 1990, Ch. 1248, effective September 24, 1990.]

#### CHAPTER 7.4. OIL SPILL RESPONSE AND CONTINGENCY PLANNING

##### Article 1. General Provisions

- § 8670.1. Citation of act.
- § 8670.2. Legislative findings and declarations.
- § 8670.3. Definitions.
- § 8670.4. Administrator for oil spill response.
- § 8670.5. Ensuring full and adequate response to oil spills.

**8670.1. Citation of act.** This chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of the Government Code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be known, and may be cited as, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

**8670.2. Legislative findings and declarations.** The Legislature finds and declares as follows:

(a) Each year, billions of gallons of crude oil and petroleum products are transported by vessel or pipeline across and through the marine waters of this state.

(b) Recent accidents in southern California, Alaska, and other parts of the nation have shown that marine transportation of oil can be a significant threat to the environment of sensitive coastal areas.

(c) Existing prevention programs are not able to reduce sufficiently the risk of significant discharge of petroleum into marine waters.

(d) Response and cleanup capabilities and technology are unable to remove consistently the majority of spilled oil when major oil spills occur in marine waters.

(e) California's coastal waters, estuaries, bays, and beaches are treasured environmental and economic resources which the state cannot afford to place at undue risk from an oil spill.

(f) Because of the inadequacy of existing cleanup and response measures and technology, the emphasis must be put on prevention, if the risk and consequences of oil spills are to be minimized.

(g) Improvements in the design, construction, and operation of tank ships, terminals, and pipelines; improvements in marine safety; maintenance of emergency response stations and personnel; and stronger inspection and enforcement efforts are necessary to reduce the risks of and from a major oil spill.

(h) A major oil spill in marine waters is extremely expensive because of the need to clean up discharged oil, protect sensitive environmental areas, and restore ecosystem damage.

(i) Immediate action must be taken to improve control and cleanup technology in order to strengthen the capabilities and capacities of cleanup operations.

(j) California government should improve its response and management of oil spills that occur in marine waters.

(k) Those who transport oil through the marine waters of the state must meet minimum safety standards and demonstrate financial responsibility.

(l) The federal government plays an important role in preventing and responding to petroleum spills and it is in the interests of the state to coordinate with agencies of the federal government, including the Coast Guard, to the greatest degree possible.

(m) California has approximately 1,100 miles of coast, including four marine sanctuaries which occupy 88,767 square miles. The weather, topography, and tidal currents in and around California's coastal ports and waterways make vessel navigation challenging. The state's major ports are among the busiest in the world. Approximately 700 million barrels of oil are consumed annually by California, with over 500 million barrels being transported by vessel. The peculiarities of California's maritime coast require special precautionary measures regarding oil pollution.

History.—Stats. 2001, Ch. 748 (AB 715), added subdivision (m), effective January 1, 2002. Stats. 2002, Ch. 573 (SB 2090), substituted “tank ships” for “tankers” in subdivision (g), effective January 1, 2003.

**8670.3. Definitions.** Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) “Administrator” means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) (1) “Best achievable protection” means the highest level of protection that can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The administrator's determination of which measures provide the best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering all of the following:

(A) The protection provided by the measure.

(B) The technological achievability of the measure.

(C) The cost of the measure.

(2) The administrator shall not use a cost-benefit or cost effectiveness analysis or any particular method of analysis in determining which measures provide the best achievable protection. The administrator shall instead, when determining which measures provide best achievable protection, give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(c) (1) “Best achievable technology” means that technology that provides the greatest degree of protection, taking into consideration both of the following:

(A) Processes that are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development.

(B) Processes that are currently in use anywhere in the world.

(2) In determining what is the best achievable technology pursuant to this chapter, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(d) “Dedicated response resources” means equipment and personnel committed solely to oil spill response, containment, and cleanup that are not used for and personnel to provide oil spill response services in the timeframes for which the equipment and personnel are rated.

(e) “Environmentally sensitive area” means an area defined pursuant to the applicable area contingency plans, as created and revised by the Coast Guard and the administrator.

(f) “Local government” means any chartered or general law city, chartered or general law county, or any city and county.

(g) (1) “Marine facility” means any facility of any kind, other than a tank ship or tank barge, that is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility is either of the following:

(A) Subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(B) Placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank.

(2) For the purposes of this chapter, “marine facility” includes a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform.

(3) For the purposes of this chapter, “marine facility” does not include a small craft refueling dock.

(h) (1) “Marine terminal” means any marine facility used for transferring oil to or from a tank ship or tank barge.

(2) “Marine terminal” includes, for purposes of this chapter, all piping not integrally connected to a tank facility, as defined in subdivision (1) of Section 25270.2 of the Health and Safety Code.

(i) “Marine waters” means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(j) "Mobile transfer unit" means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(k) "Non-dedicated response resources" means those response resources identified by an OSRO for oil spill response activities that are not dedicated response resources.

(l) "Nonpersistent oil" means a petroleum-based oil, such as gasoline, diesel, or jet fuel, that evaporates relatively quickly and is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645\* Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700\* Fahrenheit.

(m) "Nontank vessel" means a vessel of 300 gross tons or greater that carries oil, but does not carry that oil as cargo.

(n) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(o) "Oil spill cleanup agent" means a chemical, or any other substance, used for removing, dispersing, or otherwise cleaning up oil or any residual products of petroleum in, or on, any of the waters of the state.

(p) "Oil spill contingency plan" or "contingency plan" means the oil spill contingency plan required pursuant to Article 5 (commencing with Section 8670.28).

(q) (1) "Oil Spill Response Organization" or "OSRO" means an individual, organization, association, cooperative, or other entity that provides, or intends to provide, equipment, personnel, supplies, or other services directly related to oil spill containment, cleanup, or removal activities.

(2) A "rated OSRO" means an OSRO that has received a satisfactory rating from the administrator for a particular rating level established pursuant to Section 8670.30.

(3) "OSRO" does not include an owner or operator with an oil spill contingency plan approved by the administrator or an entity that only provides spill management services, or who provides services or equipment that are only ancillary to containment, cleanup, or removal activities.

(r) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters.

(s) (1) "Owner" or "operator" means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.



(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or marine facility immediately beforehand.

(D) An entity of the state or local government that acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) “Owner” or “operator” does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) “Operator” does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(t) “Person” means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. “Person” also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(u) “Pipeline” means any pipeline used at any time to transport oil.

(v) “Reasonable worst case spill” means, for the purposes of preparing contingency plans for a nontank vessel, the total volume of the largest fuel tank on the nontank vessel.

(w) “Responsible party” or “party responsible” means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(x) “Small craft” means any vessel, other than a tank ship or tank barge, that is less than 20 meters in length.

(y) “Small craft refueling dock” means a waterside operation that dispenses only nonpersistent oil in bulk and small amounts of persistent lubrication oil in containers primarily to small craft and meets both of the following criteria:

(1) Has tank storage capacity not exceeding 20,000 gallons in any single storage tank or tank compartment.

(2) Has a total usable tank storage capacity not exceeding 75,000 gallons.

(z) “Small marine fueling facility” means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, that dispenses primarily nonpersistent oil, that may dispense small amounts of persistent oil, primarily to small craft, and that meets all of the following criteria:

(A) Has tank storage capacity not exceeding 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(aa) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil into marine waters that is not authorized by any federal, state, or local government entity.

(bb) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(cc) "State oil spill contingency plan" means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(dd) "Tank barge" means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(ee) "Tank ship" means any self-propelled vessel that is constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(ff) "Tank vessel" means a tank ship or tank barge.

(gg) "Vessel" means any watercraft or ship of any kind, including every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

(hh) "Vessel carrying oil as secondary cargo" means any vessel that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

**History.**—Stats. 1990, Ch. 10, in effect from December 13, 1990 until July 1, 1991, added definitions of "crude oil" and "petroleum products" and allowed them to expire on terms of the bill and revert to the former section definitions. Stats. 1991, Ch. 300, in effect August 1, 1991, substituted "vessel that carries . . . of self-propulsion" for "relatively flat-bottomed, waterborne vessel that does not have a crew, is propelled by being pulled by another vessel, and that is constructed or adapted to carry oil in commercial quantities as cargo" after " "Barge" means any" in subdivision (b). Stats. 1992, Ch. 1313, in effect September 30, 1992, added designations "(1)" and "(2)" to subdivision (c); added "For the purposes . . . a "marine facility" " to the end of subdivision (f); added subdivision (i) and relettered the former subdivisions (i) through (n) as (j) to (o); added subdivision (p) and relettered former subdivisions (o) through (s) as (q) to (u). Stats. 1994, Ch. 1269, in effect January 1, 1995, added subdivisions (p) and (r), relettered subdivision (p) as (q), and relettered subdivisions (q) through (u) as (s) through (w), respectively. Stats. 1995, Ch. 940, in effect January 1, 1996, added subdivision (i) and relettered former subdivisions (i) and (j) as (j) and (k), respectively; added subdivision (l) and relettered former subdivisions (k) through (w) as (m) through (y), respectively; and added subdivision (z). Stats. 2001, Ch. 748 (AB 715), relettered subdivision (b) as subdivision (dd) and added "Tank" prior to "barge" in new subdivision (dd), relettered subdivision (c) as subdivision (b), deleted old subparagraph (c)(2), relettered subdivision (d) as subdivision (c), added new subdivision (d) and (e), relettered subdivision (e) as subdivision (f), relettered subdivision (f) as subdivision (g), relettered subdivision (g) as subdivision (h), relettered subdivision (h) as subdivision (i), relettered subdivision (i) as subdivision (j), added new subdivision (k), relettered subdivision (j) as subdivision (l), added new subdivision (m), relettered subdivision (k) as subdivision (n), relettered subdivision (l) as subdivision (o), added new subdivision (p) and (q), relettered subdivision (m) as subdivision (r), relettered subdivision (n) as subdivision (s), relettered subdivision (o) as subdivision (t), relettered subdivision (p) as subdivision (u), added new subdivision (v), relettered subdivision (q) as subdivision (w), relettered subdivision (r) as subdivision (x), relettered subdivision (s) as subdivision (y), relettered subdivision (t) as subdivision (z), relettered subdivision (u) as subdivision (aa), relettered subdivision (v) as subdivision (bb), relettered subdivision (w) as subdivision (cc), relettered subdivision (x) as subdivision (ee), added new subdivision (ff), relettered subdivision (y) as subdivision (gg), relettered subdivision (z) as

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subdivision (hh), added "marine" after "the vessel or" in subparagraph (s)(1)(C), substituted "that" for "which" and "of" for "or" in subparagraph (s)(1)(D), substituted "any vessel, other . . . tank barge, that" for "waterborne craft, other than a tanker or barge, which" in subdivision (x), substituted "that" for "which" in subparagraph (z)(2), substituted "that" for "which" in subdivision (aa), substituted "Tank ship means . . . vessel that is" for "Tanker means any self propelled, water borne vessel," in subdivision (ee), substituted "any watercraft or . . . merchandise or persons." for "a tanker or . . . in this section." in subdivision (gg), effective January 1, 2002.

**8670.4. Administrator for oil spill response.** There shall be an administrator for oil spill response. The administrator shall be a chief deputy director of the Department of Fish and Game. The administrator shall be appointed by the Governor and shall serve at the pleasure of the Governor. The appointment by the Governor shall be subject to the advice and consent of the Senate. The compensation of the administrator shall be fixed by the Governor pursuant to law.

**8670.5. Ensuring full and adequate response to oil spills.** The Governor shall ensure that the state fully and adequately responds to all oil spills in marine waters. The administrator, acting at the direction of the Governor, shall implement activities relating to oil spill response, including emergency drills and preparedness and oil spill containment and cleanup. The administrator shall also represent the state in any coordinated response efforts with the federal government.

**History.**—Stats. 1994, Ch. 533, in effect January 1, 1995, added "oil" after "and preparedness and".

**Article 6. The Oil Spill Prevention and Administration Fund**

- § 8670.38. Creation; "Fund".
- § 8670.39. Administration.
- § 8670.40. Oil spill prevention and administration fee.
- § 8670.41. Nontank vessel fee.
- § 8670.42. Report to the Legislature.

**8670.38. Creation; "Fund".** (a) The Oil Spill Prevention and Administration Fund is hereby created in the State Treasury. The money in the fund is available for appropriation by the Legislature and may only be used for the purposes of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(b) For the purposes of this article, "fund" refers to the Oil Spill Prevention and Administration Fund.

**8670.39. Administration.** (a) The administrator shall administer the fund in accordance with this article.

(b) The administrator may develop and adopt any rules, regulations, and guidelines determined to be necessary to carry out and enforce this article.

**8670.40. Oil spill prevention and administration fee.** (a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed five cents (\$0.05) per barrel of crude oil or petroleum products.

(b) (1) The oil spill prevention and administration fee shall be imposed upon every person owning crude oil at the time that the crude oil is received

at a marine terminal from within or outside the state, and upon every person owning petroleum products at the time that those petroleum products are received at a marine terminal from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received by means of a vessel operating in, through, or across the marine waters of the state. In addition, every operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through the marine waters of the state. The fees shall be remitted to the board by the terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a marine terminal or transported by pipeline during the preceding month. No fee shall be imposed pursuant to this section with respect to any crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has been collected by a terminal operator registered under this chapter or paid to the board with respect to the crude oil or petroleum product.

(2) Every owner of crude oil or petroleum products is liable for the fee until it has been paid to the board, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(6) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of any expenditure for this purpose shall not exceed the amount of one hundred thousand dollars (\$100,000) in any fiscal year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993-94 fiscal year, and each fiscal year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars (\$100,000) from the fund for the purpose of allowing the administrator to respond to threatened oil spills.

(7) To reimburse the board for costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(8) To reimburse the costs incurred by the State Lands Commission in implementing the Oil Transfer and Transportation Emission and Risk Reduction Act of 2002 (Division 9 (commencing with Section 8780) of the Public Resources Code).

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

**History.**—Stats. 1991, Ch. 10, in effect December 13, 1990, imposed the fee upon any owner of crude oil at the time it was received at a marine terminal. The statute expired on July 1, 1991 and the original wording of the section became effective on that date. Stats. 1991, Ch. 300, in effect August 1, 1991, substituted “State Board of Equalization shall collect a” for “administrator shall collect annually” in the first sentence, and substituted “crude oil or petroleum” for “oil” after “per barrel of” in the second sentence of subdivision (a); completely rewrote subdivisions (b)(1) and (2) which previously read: “Every marine terminal operator shall pay the oil spill prevention and administration fee for each barrel of oil delivered through the operator’s marine terminal. In addition, every operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of oil transported into the state by means of pipeline operating across, under, or through the marine waters of this state. The fee for a pipeline shall not be based on the number of times an individual pipeline enters and exits marine waters nor shall the fee be collected when oil is transported within a facility, such as between a tank facility and refinery or electric generating plant. The administrator shall develop regulations governing the fees to be assessed on pipelines. The amount of the fee to be paid by an operator shall be established by the administrator commensurate with the risks and potential sizes of spills from the operator’s marine facility.”; substituted “board” for “State Board of Equalization” before “shall collect the” in subdivision (d); and added subdivision (e)(6). Stats. 1992, Ch. 1313, in effect September 30, 1992, added subdivision (d)(6) and renumbered former (b) as (7), and replaced all references to “oil spill” with “oilspill”. Stats. 1992, Ch. 1314, in effect January 1, 1993, added subdivision (b)(3); substituted “Commencing” for “Beginning” before “with the 1993-94” and substituted “fund” for “Oil Spill Prevention and Administration Fund” after “(\$100,000) from the” in the last sentence of subdivision (e)(6); replaced all references to “oilspill” with “oil spill”. Stats. 2002, Ch. 514 (SB 849), in effect January 1, 2003, substituted “five cents” for “four cents” in subdivision (a), substituted “January 20” for “January 15” in subparagraph (b)(3), changed “which” to “that” in subdivision (e)(2), changed “Director or Finance” to “Director of Finance” in subdivision (e)(6), deleted “the provisions of” in subdivision (f) (e)(7), added subparagraph (e)(8).

**8670.41. Nontank vessel fee.** (a) The administrator shall charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that

is based upon the administrator's costs in implementing this chapter relating to nontank vessels. Before January 1, 2005, the fee shall be two thousand five hundred dollars (\$2,500), or less.

(b) The administrator may charge a reduced fee under this section for nontank vessels determined by the administrator to pose a reduced risk of pollution, including, but not limited to, vessels used for research or training and vessels that are moored permanently or rarely move.

(c) The administrator shall deposit all revenue derived from the fees imposed under this section in the Oil Spill Prevention and Administration Fund established in the State Treasury under Section 8670.38.

(d) Revenue derived from the fees imposed under this section may be spent for the purposes listed in subdivision (e) of Section 8670.40, and may not be used for responding to an oil spill.

History.—Stats. 2002, Ch. 514 (SB 849), in effect January 1, 2003.

**8670.42. Report to the Legislature.** The Department of Fish and Game shall contract with the Department of Finance for the preparation of a detailed report that shall be submitted on or before January 1, 2005, to the Governor and the Legislature on the financial basis and programmatic effectiveness of the state's oil spill prevention, response, and preparedness program. This report shall include an analysis of all of the oil spill prevention, response, and preparedness program's major expenditures, fees and fines collected, staffing and equipment levels, spills responded to, and other relevant issues. The report shall recommend measures to improve the efficiency and effectiveness of the state's oil spill prevention, response, and preparedness program, including, but not limited to, measures to modify existing contingency plan requirements, to improve protection of sensitive shoreline sites, and to ensure adequate and equitable funding for the state's oil spill prevention, response, and preparedness program.

History.—Stats. 2002, Ch. 514 (SB 849), in effect January 1, 2003.

## Article 7. Oil Spill Response Trust Fund

- § 8670.46. Creation; "Fund".
- § 8670.47. Administration.
- § 8670.47.5. Deposit of specified moneys in fund.
- § 8670.48. Oil spill response fee; Definitions; Authorization of refunds; Legislative intent.
- § 8670.48.5. Findings required as condition of increase in amount of fee.
- § 8670.50. Use of money from fund.
- § 8670.51. Payment of judgment by administrator; Subrogation.
- § 8670.51.1. Designation of responsible party; Claims in specified amounts; Creation of advisory committee; Statute of limitations; Adoption of regulations; Punitive damages.

**8670.46. Creation; "Fund".** (a) The Oil Spill Response Trust Fund is hereby created in the State Treasury. Notwithstanding Section 13340, the money in the fund is continuously appropriated to the administrator for expenditure, without regard to fiscal years, for the purposes of this article.

(b) For the purposes of this article, "fund" refers to the Oil Spill Response Trust Fund.

8670.47. **Administration.** (a) The administrator shall administer the fund in accordance with this article.

(b) The administrator may develop and adopt any rules, regulations, and guidelines determined to be necessary to carry out and enforce this article.

(c) The administrator is responsible for ensuring that there are adequate moneys available in the fund to carry out the purposes of this chapter.

8670.47.5. **Deposit of specified moneys in fund.** The following moneys shall be deposited into the fund:

(a) The fee required pursuant to Section 8670.48.

(b) Any federal funds received to pay for response, containment, abatement, and rehabilitation costs from an oil spill in marine waters.

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(c) Any funds borrowed pursuant to Article 7.5 (commencing with Section 8670.53.1).

(d) Any interest earned on the moneys in the fund.

(e) Any cost recoveries from responsible parties pursuant to Section 8670.53.

**8670.48. Oil Spill response fee; Definitions; Authorization of refunds; Legislative intent.** (a) (1) A uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), shall be imposed upon every person owning petroleum products at the time the petroleum products are received at a marine terminal within this state by means of a vessel from a point of origin outside this state. The fee shall be remitted to the State Board of Equalization by the terminal operator on the 25th day of each month based upon the number of barrels of petroleum products received during the preceding month.

(2) Every owner of petroleum products is liable for the fee until it has been paid to the state, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(b) Every operator of a pipeline shall also pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), transported into the state by means of a pipeline operating across, under, or through the marine waters of the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of petroleum products so transported into the state during the preceding month.

(c) (1) Every operator of a refinery shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25) for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), received at a refinery within the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of crude oil so received during the preceding month.

(2) The fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer as defined in paragraph (3). The board shall not identify a company as exempt from the fee requirements of this section if that company was reorganized, sold, or otherwise modified with the intent of circumventing the requirements of this section.

(3) For purposes of this chapter, "independent crude oil producer" means any person or entity producing crude oil within this state who performs no refining of crude oil into product, and who possesses or owns no retail gasoline marketing facilities.

(d) Every marine terminal operator shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25), in accordance with

subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), that is transported from within this state by means of marine vessel to a destination outside this state.

(e) Every operator of a pipeline shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents (\$0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), transported out of the state by pipeline.

(f) (1) The fees required pursuant to this section shall be collected during any period that the administrator determines that either the amount in the fund is less than or equal to 95 percent of the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code, or that additional money is required to pay for the purposes specified in subdivision (k).

(2) Whenever the administrator, in consultation with the State Board of Equalization, estimates that the amount in the fund will reach the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code, and the money in the fund is not required for the purposes specified in subdivision (k), the administrator shall direct the State Board of Equalization to cease collecting the fee. In no event shall the fee cease to be imposed if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, unless the Treasurer has certified to the administrator that the continued imposition of the fee is not required for the purposes specified in paragraph (7) of subdivision (k).

(3) The administrator, in consultation with the State Board of Equalization, shall set the amount of the oil spill response fees. The oil spill response fees shall be imposed on all fee payers in the same amount. The administrator shall not set the amount of the fee at less than twenty-five cents (\$0.25) for each barrel of petroleum products or crude oil, unless the administrator finds that the assessment of a lesser fee will cause the fund to reach the designated amount within four months. The fee shall not be less than twenty-five cents (\$0.25) for each barrel of petroleum products or crude oil if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, unless the Treasurer has certified to the administrator that the money in the fund is not required for the purposes specified in paragraph (7) of subdivision (k).

(g) The fees imposed by subdivisions (d) and (e) shall be imposed in any calendar year beginning the month following the month when the total cumulative year-to-date barrels of crude oil transported outside the state by all fee payers by means of vessel or pipeline exceeds 6 percent by volume of

the total barrels of crude oil and petroleum products subject to oil spill response fees under subdivisions (a), (b), and (c) for the prior calendar year.

(h) For purposes of this chapter, “designated amount” means the amounts specified in Section 46012 of the Revenue and Taxation Code.

(i) (1) The administrator shall authorize refunds of any money collected, for reporting periods after January 31, 1991, in excess of the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code, any amounts determined by the administrator to be necessary to provide for any of the purposes specified in paragraphs (1) to (6), inclusive, of subdivision (k), and, if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind imposed in connection with those borrowings remain outstanding or unpaid, any amounts that the Treasurer has certified to the administrator as being required for the purposes specified in paragraph (7) of subdivision (k). The State Board of Equalization, as directed by the administrator, and in accordance with Section 46653 of the Revenue and Taxation Code, shall refund the excess amount of fees collected to each feepayer who paid the fee to the state, in proportion to the amount that each feepayer paid into the fund during the preceding 12 monthly reporting periods in which there was a fee due, including the month in which the fund exceeded the specified amount, and only for those periods which commenced on or after January 31, 1991. If the total amount of money in the fund exceeds the amount specified in this subdivision by 10 percent or less, refunds need not be ordered by the administrator. Nothing in this section shall require the refund of excess fees as provided in this subdivision more frequently than once each year.

(2) Any amount of fees collected in excess of the specified amount for periods prior to February 1, 1991, shall be refunded as follows:

(A) First, to fee payers who paid oil spill response fees under subdivision (d) or (e) of Section 8670.48.

(B) Second, to fee payers in proportion to the amount each feepayer paid into the fund for the period from September 24, 1990, to January 31, 1991, inclusive, less any amounts refunded pursuant to paragraph (1).

(j) The State Board of Equalization shall collect the fee and adopt regulations implementing the fee collection program. All fees collected pursuant to this section shall be deposited in the Oil Spill Response Trust Fund.

(k) The fee described in this section shall be collected solely for any of the following purposes:

(1) To provide funds to cover promptly the costs of response, containment, and cleanup of oil spills into marine waters, as specified in subdivision (b), including damage assessment costs, and wildlife rehabilitation as provided in Section 8670.61.5.

(2) To provide emergency loans and to cover response and cleanup costs and other damages suffered by the state or other persons or entities from oil spills into marine waters, as specified in subdivision (b), which cannot otherwise be compensated by responsible parties or the federal government.

(3) To pay claims for damages pursuant to Section 8670.51.

(4) To pay claims for damages, except for damages described in paragraph (7) of subdivision (g) of Section 8670.56.5, pursuant to Section 8670.51.1.

(5) To pay for the arrangement of financial security in the amount specified in subdivision (b) of Section 46012 of the Revenue and Taxation Code, as authorized by subdivision (p).

(6) To pay indemnity and related costs and expenses as authorized by Section 8670.56.6.

(7) To pay principal, interest, premium, if any, and fees, charges, and costs of any kind imposed in connection with funds borrowed pursuant to Article 7.5 (commencing with Section 8670.53.1).

(8) To pay for the costs of rescue, medical treatment, rehabilitation, and disposition of oiled wildlife, as incurred by the network of oiled wildlife rescue and rehabilitation stations created pursuant to Section 8670.37.5.

(l) (1) The interest that the state earns on the funds deposited into the Oil Spill Response Trust Fund shall be deposited in the fund and shall be used to maintain the fund at the designated amount. Interest earned until July 1, 1998, on funds deposited pursuant to subdivision (a) of Section 46012 of the Revenue and Taxation Code, as determined jointly by the Controller and the Director of Finance, shall be available upon appropriation by the Legislature in the Budget Act to establish, equip, operate, and maintain the network of rescue and rehabilitation stations for oiled wildlife as described in Section 8670.37.5 and to support technology development and research related to oiled wildlife care. Interest earned on the financial security portion of the fund, required to be accessible pursuant to subdivision (b) of Section 46012 of the Revenue and Taxation Code shall not be available for that purpose. If the fund exceeds that designated amount, the interest not needed to equip, operate, and maintain the network of rescue and rehabilitation stations, or for appropriate technology development and research regarding oiled wildlife care, shall be deposited into the Oil Spill Prevention and Administration Fund, and shall be available for the purposes authorized by Article 6 (commencing with Section 8670.38).

(2) (A) For the fiscal year beginning July 1, 1998, and each year thereafter, consistent with this article, the administrator shall submit for appropriation, through the Governor's budget, an amount up to one million three hundred thousand dollars (\$1,300,000), of the interest earned on the funds deposited into the Oil Spill Response Trust Fund, for the purpose of equipping, operating, and maintaining the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5 and for

support of technology development and research related to oiled wildlife care. Through the budget process, the Legislature shall review and approve the appropriation. The remaining interest shall be deposited into the Oil Spill Prevention and Administration Fund pursuant to paragraph (1).

(B) The administrator shall report to the Legislature not later than June 30, 2002, on the progress and effectiveness of the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5, and the adequacy of the Oil Spill Response Trust Fund to meet the purposes for which it was established.

(C) At the administrator's request, the funds made available pursuant to this paragraph may be directly appropriated to a suitable program for wildlife health and rehabilitation within a school of veterinary medicine within this state, provided that an agreement exists, consistent with this chapter, between the administrator and an appropriate representative of the program for carrying out that purpose. The administrator shall attempt to have such an agreement in place at all times. The agreement shall ensure that the training of, and the care provided by, the program staff are at levels that are consistent with those standards generally accepted within the veterinary profession.

(D) The funds made available pursuant to this paragraph shall not be considered an offset to any other state funds appropriated to the program, the program's associated school of veterinary medicine, or the program's associated college or university, and the funds shall not be used for any other purpose. If an offset does occur or the funds are used for an unintended purpose, expenditure of any appropriation of funds pursuant to this paragraph may be terminated by the administrator and the administrator may request reappropriation to accomplish the intended purpose. The administrator shall annually review and approve the proposed uses of any funds made available pursuant to this paragraph.

(m) The Legislature finds and declares that effective response to oil spills requires that the state have available sufficient funds in a response fund. The Legislature further finds and declares that maintenance of that fund is of utmost importance to the state and that the money in the fund shall be used solely for the purposes specified in subdivision (k).

(n) For the purposes of paragraphs (1) and (2) of subdivision (k) waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(o) It is the intent of the Legislature, in enacting this section, that the fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer.

(p) The Treasurer shall purchase financial security, in the designated amount specified in subdivision (b) of Section 46012 of the Revenue and Taxation Code, which may be drawn upon immediately by the administrator

upon making the determinations as required by Section 8670.49. The financial security shall be in a form as described in subdivision (a) of Section 8670.53.3.

(q) Nothing in this section limits the authority of the administrator to raise the oil spill response fees pursuant to Section 8670.48.5 of the Government Code.

**8670.48.5. Findings required as condition of increase in amount of fee.** (a) The administrator may raise the fees specified in Section 8670.48 to a maximum of one dollar (\$1) per barrel, provided that the fee may only be raised by maximum increments of twenty-five cents (\$0.25) not more frequently than once every three months. The administrator shall raise the fee only upon making the following findings:

(1) A calamitous or unforeseen event, or series of events, has severely depleted or exhausted, or will severely deplete or exhaust, the fund.

(2) The Governor has requested the Treasurer to borrow the funds and the Treasurer finds that the fee is insufficient for the Treasurer to borrow enough money to meet the reasonably anticipated demands on the fund for authorized expenditures, including providing funds for the costs of response, containment, and cleanup of oil spills, damage assessment costs, wildlife rehabilitation, emergency loans, and damage claims, or the Treasurer has previously borrowed funds pursuant to the Governor's request, and the Treasurer finds that the fee is insufficient to repay and secure existing borrowings.

(3) Failure to raise the fee in the amount proposed will result in unmet, or unpaid, authorized expenditures.

(b) At least 30 days prior to the day the increased fee shall be effective, the administrator shall inform the Legislature of his or her intent to raise the fee.

(c) A single, incremental increase shall be effective until the later of (1) the delivery by the Treasurer of a certificate to the administrator as authorized by subdivision (e) of Section 8670.53.3 or (2) the expiration date established by the administrator not to exceed one year. The increase may be renewed by the administrator before its expiration upon making the findings required by subdivision (a).

(d) It is the intent of the Legislature that the fund shall not be used for any purpose other than those set forth in this chapter.

History.—Stats. 1992, Ch. 1312, in effect September 30, 1992, rewrote subdivision (c) which read: "No single, incremental increase shall be effective for more than one year, unless renewed by the director before the expiration of the year upon making the findings required in subdivision (a). The administrator may establish an expiration date of less than one year." Stats. 1993, Ch. 1190, in effect October 11, 1993, added ", or will severely deplete or exhaust, the fund" after "or exhausted" in subdivision (a)(1); added "or the Treasurer has . . . secure existing borrowings" after "and damage claims" in subdivision (a)(2); and deleted "The Legislature may reject the increase by statute." at the end of subdivision (b).

**8670.50. Use of moneys from fund.** (a) Money from the fund may only be expended to cover the costs incurred by the state and local governments and agencies for all of the following:



(1) Respond promptly to, contain, and clean up the discharge, provided those efforts are pursuant to the state and local oil spill contingency plans established under this chapter, the marine response element of the state oil spill contingency plan established under Article 3.5 (commencing with Section 8574.1) of Chapter 7, or those efforts are undertaken at the direction of the administrator.

(2) Meet the requirements of Section 8670.61.5, relating to wildlife rehabilitation.

(3) Make the payments contemplated by subdivision (k) of Section 8670.48.

(b) In the event of an oil spill, the administrator shall make whatever expenditures are necessary and appropriate from the fund to cover the costs described in subdivision (a).

History.—Stats. 1992, Ch. 1312, in effect September 30, 1992, substituted “expended” for “fund” after “may only be” in subdivision (a) and added subdivision (a)(3).

**8670.51. Payment of judgment by administrator; Subrogation.**

(a) When a person has obtained a final judgment for damages resulting from an oil spill in marine waters, but is unable, within one year after the date of its entry, to enforce the judgment pursuant to Title 9 (commencing with Section 680.010) of the Code of Civil Procedure, or is unable to obtain satisfaction of the judgment from the federal government within 90 additional days, the administrator shall pay an amount not to exceed those amounts which cannot be recovered from a responsible party and the fund shall be subrogated to all rights, claims, and causes of action that the claimant has under this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, Section 8670.61.5, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(b) Any person may apply to the fund for compensation for damages and losses suffered as a result of an oil spill in marine waters under any of the following conditions:

(1) The responsible party or parties cannot be ascertained.

(2) A responsible party is not liable for noneconomic damages caused by another.

(3) Subdivision (i) of Section 8670.56.6 is applicable to the claim.

(c) The administrator shall not approve any claim in an amount which exceeds the amount to which the person would otherwise be entitled pursuant to Section 8670.56.5, and shall pay claims from the fund which are approved pursuant to this section.

**8670.51.1. Designation of responsible party; Claims in specified amounts; Creation of advisory committee; Statute of limitations; Adoption of regulations; Punitive damages.** (a) (1) Upon learning of an oil spill, the administrator shall immediately designate the responsible party, who, if that designation is not challenged, shall immediately, widely advertise the manner in which it shall accept and pay claims.

(2) If the designation of the administrator is challenged, the administrator shall immediately, widely advertise the manner in which he or she shall accept, process, and pay claims. If the administrator's designation is later upheld, all costs incurred by the administrator, including interest and appropriate penalties, shall be assessed against the responsible party.

(3) If the administrator is unable to designate a responsible party, the administrator shall immediately, widely advertise the manner in which the administrator shall accept, process, and pay claims. In the absence of a designated responsible party the claimant shall submit his or her claim to the federal fund. If there is no response within 60 days, the claimant may submit his or her claim to the fund.

(b) Claims under the amount of fifty thousand dollars (\$50,000) may be submitted directly to the fund. The claimant shall not be required to make a demand on the responsible party or any federal fund. It is the intent of the Legislature that these claims be processed as expeditiously as possible, and the administrator shall contract with professional adjusters to handle the claims as fairly and professionally as possible. Claimants shall assign or subrogate all rights against the responsible party to the fund before payment and release.

(c) Claims in excess of the amount of fifty thousand dollars (\$50,000) shall first be presented to the designated responsible party for payment. If a satisfactory response is not forthcoming within 60 days, the claimant shall submit his or her claim to the appropriate federal fund. If a satisfactory response is not forthcoming from the appropriate federal fund within 60 days, the claimant may submit the claim to the fund. If the administrator does not designate a responsible party, the claim shall be submitted directly to the appropriate federal fund.

(d) (1) If the federal fund completely rejects a claim, makes a partial offer, or the claimant rejects an offer, the claimant may, nevertheless, apply for reimbursement from the fund, provided that all evidence developed during the federal fund process shall be admissible during the processing of the claim. The administrator shall specifically consider any federal offer.

(2) Any federal payment shall be offset against any payment from the fund.

(3) The claimant shall assign or subrogate all rights under federal law to the fund. Any payment of claims from the fund shall require assignment or subrogation of the claimant's rights under state law to the fund.

(e) The administrator may levy finds against frivolous claims pursuant to Section 128.5 of the Code of Civil Procedure.

(f) Entities that pay into the fund shall have no standing to contest claims against the fund for claims less than one million dollars (\$1,000,000). The entities may petition the administrator to have standing for claims between



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one million dollars (\$1,000,000) and three million dollars (\$3,000,000). The entities shall have standing for claims in excess of three million dollars (\$3,000,000).

(g) An advisory committee comprised of entities that pay into the fund and other interested parties shall be created and the administrator shall consult with the committee on the manner in which payments are made from the fund.

(h) Claims for reimbursement from the fund shall be made within three years from the date the loss occurred.

(i) Dissatisfied claimants may sue the fund within six months of the administrator's final decision regarding a claim.

(j) The administrator shall develop and adopt regulations regarding the manner in which claims shall be required to be submitted, processed, heard, and challenged.

(k) Punitive damages shall not be paid from the fund.

**History.—Stats. 1993, Ch. 1190, in effect October 11, 1993, substituted “administrator” for “director” after “may petition the” in subdivision (f); added “shall be made” after “from the fund” in subdivision (h); and added “required to be” after “claims shall be” in subdivision (j).**

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